IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CONTEMPT PETITION NO.243 OF 2004

The Saraswat Co-operative Bank Ltd. : Petitioners

V/s.

Jayant Industrial Packaging Ltd. & Ors. : Respondents

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Mr.Prashant Naik i/b. Mr.Y.R.Naik for the petitioners.

Mr.Pratik Sakseria i/b. M/s.Nankani & Associates for respondent nos.1 to 4.

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CORAM : S.A.BOBDE, J.

DATE : JULY 10, 2007.

P.C.

1. By this Contempt Petition, the petitioners allege breach of the order of the Division Bench of this Court dated 4.4.2004. By the said order at exh.'C' to the petition, this Court while issuing notice before admission, passed an ad-interim order in terms of prayer clause b(ii) imposing a condition on the petitioners who are the respondents herein that they will not dispose of, transfer, assign or create any encumbrance on the property hypothecated/mortgaged to the respondent no.1 therein. According to the petitioners, the contemnors herein have breached that order by disposing of the plant and

machinery by removing paper making plant. The learned counsel for the petitioners relied on the report of one Mr.A.S.Birwadkar, Senior Manager of the Bank, made after visiting the factory premises on 23.4.2004. A perusal of the report, however, does not disclose or establish that the respondents removed the machinery after the impugned order was passed on 4.4.2003.

2. Mr.Sakseria, the learned counsel for the respondent nos.1 to 4, points out to a statement made by the petitioners before the Arbitrator appointed by the Central Registrar of Co-operative Societies in the Statement of Claim. In that statement, the petitioners have alleged that the respondents herein have disposed of the said plant and machinery on or about November, 2000 without the knowledge or consent of the Bank. It may, therefore, well be that the respondents had removed the machinery prior to passing of the order in the year 2000.

3. It was next contended by Mr.Naik, the learned counsel for the petitioners, that had the respondents disclosed that there was no machinery, this Court may not have passed the order on 4.4.2004. It must, however, be noted that the order is not only in respect of the plant and machinery but it imposes general prohibition restraining the petitioners therein i.e. the respondents from

disposing of, transferring, assigning or creating any encumbrance "on the property hypothecated/mortgaged". In the circumstances, a clear case for disobedience of the order is not made out.

4. The Contempt Petition is, therefore, dismissed.

S.A. BOBDE, J.